



**Department of Veterans Affairs  
Office of Inspector General**

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**Administrative Investigation  
Misuse of Position, Abuse of Authority,  
and Prohibited Personnel Practices  
Office of Information & Technology  
Washington, DC**

**Redacted**



**DEPARTMENT OF VETERANS AFFAIRS**  
**Office of Inspector General**  
**Washington, DC 20420**

**TO:** Assistant Secretary for Information and Technology

**SUBJECT:** Administrative Investigation - Misuse of Position, Abuse of Authority, and Prohibited Personnel Practices, OI&T, Washington, DC (2009-1123-IQ-0048)

## Summary

We substantiated that Ms. Katherine Adair Martinez, Deputy Assistant Secretary (DAS) for Information Protection and Risk Management (IPRM), Office of Information and Technology (OI&T), misused her position, abused her authority, and engaged in prohibited personnel practices when she influenced a VA contractor and later her VA subordinates to employ Ms. Laura Nash, Executive Assistant, IPRM. Further, we substantiated that Ms. Martinez misused her position when she took advantage of an inappropriate personal relationship with the former Assistant Secretary for Information and Technology, Mr. Robert Howard, to move her duty station to Florida even though she spent almost 60 percent of her time at VA Central Office on official travel. We also substantiated that Ms. Martinez failed to provide proper contract oversight and did not properly fulfill her duties as a Contracting Officer's Technical Representative (COTR). In addition, we substantiated that Ms. Kathryn Maginnis, Associate Deputy Assistant Secretary (ADAS), IPRM, abused her authority and [REDACTED] (b)(6) [REDACTED] and [REDACTED], IPRM, engaged in prohibited personnel practices in the filling of four GS-15 positions.

## Introduction

The VA Office of Inspector General Administrative Investigations Division investigated allegations that Ms. Martinez improperly appointed an Executive Assistant and that the appointment was at a rate above the minimum salary, normally a step 1 of a specified pay grade. We also investigated an allegation that Ms. Martinez had an inappropriate personal relationship with Mr. Howard that resulted in favorable treatment and enabling her to abuse her authority. To assess these allegations, we interviewed Ms. Martinez, Ms. Nash, Mr. Howard, Ms. Maginnis, [REDACTED], and other relevant VA and (b)(6) contractor employees. We also reviewed official personnel, contract, and other pertinent records, as well as Federal laws, regulations, and VA policy.

## Results

### Issue 1: Whether Ms. Martinez Misused Her Position for the Personal Gain of a Friend

The Standards of Ethical Conduct for Employees of the Executive Branch state that public service is a public trust; that each employee has a responsibility to place loyalty to the Constitution, laws, and ethical principles above private gain; and that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101. The Standards also state that an employee shall not use his public office for his own private gain or for the private gain of friends or persons with whom the employee is affiliated in a nongovernmental capacity, and they prohibit an employee engaged in a financial transaction from using nonpublic information or allowing the improper use of nonpublic information to further his own private interest or that of another, whether through advice, recommendation, or by unauthorized disclosure. 5 CFR § 2635.702, 703. Federal Acquisition Regulations state that Government business must be conducted in a manner above reproach and with complete impartiality and with preferential treatment for none. 48 CFR § 3.101-1, 104-4. They also prohibit an employee from knowingly disclosing contractor bid, proposal, or source selection information before the award of a Federal agency procurement contract to which the information relates.

#### *Background*

Ms. Martinez recalled that she first met Ms. Nash, formerly a contractor employee and currently Ms. Martinez's Executive Assistant, in 2000 from their involvement in the organization "Women in Technology (WIT)," a not-for-profit organization dedicated to offering women in the technology industry a wide range of professional and networking opportunities. Ms. Nash told us that she first met Ms. Martinez in the late 1990's or early 2000's when she was a salesperson for a VA contractor doing work at Veterans Benefits Administration (VBA). Ms. Martinez was VBA's Chief Information Officer at that time. Ms. Nash said that they developed a relationship through their interaction at VBA and their involvement with WIT, seeing one another at industry events and socializing every couple of months. Ms. Martinez and Ms. Nash gave examples of their shared social events, such as getting together for a barbeque, a child's birthday party, and dinner with families. Ms. Nash said that she was laid off from her private sector job in May 2006. Ms. Martinez said that after Ms. Nash told her about losing her job, she (Ms. Martinez) spoke to three women associated with WIT, telling them that Ms. Nash was looking for work. However Ms. Nash told us that Ms. Martinez reached out to only one company, Engineering Systems Solutions (ESS). ESS subsequently offered Ms. Nash a consulting position and then hired her, after VA awarded a contract non-competitively to ESS. Ms. Nash was the Project Manager for ESS on the Enterprise Identity Safety (EIS) contract from September 2006 until hired by VA in November 2007.

### *Misuse of Position*

Ms. Martinez told us that after the May 2006 massive breach of VA data, the VA Secretary wanted to establish a “Gold Standard” in implementing information security within the Department. Ms. Martinez said that she then wrote a “task order” for the Enterprise Identity Safety (EIS) contract. She said that in her research for the project, she met a person that we will refer to as Mr. John Doe. Ms. Martinez claimed that Mr. Doe was an ESS consultant; however, Mr. Doe told us that he did not begin working for ESS until after ESS received the EIS contract in September 2006. Ms. Martinez later admitted that Mr. Doe was a long time friend of her husband’s. She said that she was looking at companies for this project and that Mr. Doe introduced her to the then Executive Vice President of ESS. Mr. Doe told us that he met Ms. Martinez at a 1998 security conference, socializing with her at professional meetings and dances, and the ESS Vice President confirmed that Mr. Doe introduced him to Ms. Martinez. The ESS Director of Administration and Contracts told us that Mr. Doe had an established relationship with VA and Ms. Martinez, and Mr. Doe brought the contract opportunity to the attention of ESS, recommending that ESS submit a proposal.

Ms. Martinez said that she met with ESS employees in July or August 2006, and took a tour of the ESS facility. In a July 10 email, Mr. Doe told the ESS Vice President that he set up a meeting with Ms. Martinez and that “we need to provide a sample SOW [statement of work].” In several other July emails, there were exchanges between Ms. Martinez, Mr. Doe, and the ESS Vice President concerning other meetings, and in one email dated July 25, Ms. Martinez sent, from her personal email account to Mr. Doe’s personal email account, several documents titled: *Draft of Data Analysis SOW; Evaluation Factors; IGCE; and Best Value Proposal Evaluation Worksheet*. Less than 3 hours later, Mr. Doe forwarded the documents to the ESS Vice President, and 4 days later, he emailed the ESS Vice President another document titled *VA SOW Enterprise Identity Safety4.doc*.

Ms. Nash told us that sometime after she lost her job, Ms. Martinez told her that VA was going to do a contract request for proposal and that Ms. Martinez was looking at ESS as a potential vendor. Ms. Martinez said that she told Ms. Nash that ESS might have a position that would interest her and encouraged Ms. Nash to contact ESS. She further said that she spoke to the ESS Vice President and told him that they might want to “look at her [Ms. Nash] for this task.” In an email dated August 7, 2006, Ms. Nash sent her resume to Ms. Martinez, and in the email, Ms. Nash stated that she was looking forward to speaking with the ESS Vice President. That same day, Ms. Martinez emailed an edited version of Ms. Nash’s resume to the ESS Vice President, and ESS included that version of the resume in their proposal to VA. Ms. Martinez told us that she did not pressure ESS to hire Ms. Nash, only that she called the ESS Vice President, recommended Ms. Nash to him, and asked if he wanted to see Ms. Nash’s resume.

The ESS Vice President told us that Ms. Martinez knew Ms. Nash from their involvement in WIT and that Ms. Martinez told him that ESS should consider Ms. Nash. He further said that Ms. Martinez told him that ESS could use Ms. Nash on the VA contract, telling him “a number of times” that he “ought to look at this woman” because Ms. Martinez thought Ms. Nash had the “right credentials.” While he said that Ms. Martinez never said that if they hired Ms. Nash that the VA would award ESS the EIS contract, he said that he thought Ms. Nash was the best person to promote the interests of ESS at VA.

Ms. Nash told us that the ESS Vice President telephoned and asked her if she wanted to “come on board as a concession to help them put the proposal together” and he told her that if she was willing to work as a consultant in the development of the proposal for VA, they would hire her full-time if they got the VA contract. Ms. Nash said that she began working on the proposal as a consultant to ESS in August 2006. A former ESS employee told us that Ms. Nash “just showed up” at ESS one day and that ESS placed her in a “pretty high position” that did not exist prior to her arrival.

The ESS Director of Administration and Contracts said that on September 6, 2006, ESS made Ms. Nash a contingency offer which promised her a position should ESS get the contract. He said that Ms. Nash accepted and signed the contingency letter. The ESS Director said that this allowed ESS to include Ms. Nash’s resume in their request for proposal, which helped “strengthen” it, and VA could legitimately believe that Ms. Nash had a position at ESS, should ESS get the contract with VA. Contract documents showed that VA awarded the EIS contract to ESS on September 29, 2006, and the ESS Director told us that ESS hired Ms. Nash as the Program Manager on that contract 4 days later, at the direction of the ESS Vice President. Additionally, Mr. Doe told us that he began working as a consultant to ESS in September 2006, after ESS got the contract with VA.

## **Conclusion**

We concluded that Ms. Martinez misused her official position for the personal gain of a friend when she told the ESS Vice President, while in discussion with ESS and prior to awarding a contract to them, that he should consider Ms. Nash, a long time friend of Ms. Martinez, for a position with ESS on the EIS contract and sent him Ms. Nash’s resume. Although she never told the ESS Vice President that the VA contract was contingent on Ms. Nash’s hiring, Ms. Martinez told him numerous times to “look at” her and that she had the “right credentials.” As a result, the ESS Vice President subsequently asked Ms. Nash to help them put together their proposal and offered her full-time employment should VA award ESS the EIS contract. While there may not have been an expressed quid pro quo (ESS will get a VA contract if you hire my friend), Ms. Martinez clearly and improperly pressured ESS to hire Ms. Nash while Ms. Martinez was officially involved in setting up a VA contract.

We also concluded that Ms. Martinez violated Federal acquisition regulations when she shared VA proprietary procurement information with Ms. Nash by telling her that the VA planned to issue a request for proposal, that ESS was a potential vendor, and suggested that Ms. Nash contact ESS for employment, resulting in a personal gain for Ms. Nash. We found it problematic that Ms. Martinez also shared VA proprietary information with a long time friend of her husband's, who was not employed by VA or ESS, and allowed him to act as an emissary for a VA procurement. This gave him an opportunity to exploit the situation for his own personal gain and possible employment at ESS, and it also gave ESS a significant advantage in obtaining a VA contract.

**Recommendation 1.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for the misuse of her position for the personal gain of Ms. Nash.

**Recommendation 2.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for violating acquisition regulations when she improperly shared VA proprietary procurement information with Ms. Nash and Mr. Doe.

## **Issue 2: Whether Ms. Martinez Failed to Provide Proper Contract Oversight**

VA Acquisition Regulations state that an individual may not commit the Government to purchases of supplies, equipment, or services unless the individual has been delegated the requisite contracting authority. Individuals making such commitments or acting beyond the scope of their authority may be held financially liable. 48 CFR § 801.601. Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government. 5 CFR § 2635.101 (b)(6). VA policy states that only appointed contracting officers or other authorized officials, within their level of authority, may commit VA to pay for supplies or services and that the Government is under no obligation to pay for the supplies or services ordered by individuals without authority unless an authorized official ratifies the action and a contracting officer or other official with appropriate authority sanctions that commitment. VA Directive 7401.7, Para. 2.

Ms. Martinez told us that she wrote the "task order" for the EIS contract; that she was the Contracting Officer's Technical Representative (COTR); and that she did not know if she was qualified as a COTR. Ms. Martinez further said that she never received or signed a Delegation of Authority Letter to act on behalf of the Contracting Officer. Contracting records contained an email dated September 27, 2006, in which a Contract Specialist told Ms. Martinez that he had a COTR Delegation Letter for her to sign and that she was to call him to arrange for him to bring her the letter for her signature. The EIS contract, signed by the Contracting Officer on September 29, 2006, reflected that Ms. Martinez was designated at the COTR; however, records did not contain a signed or unsigned Delegation Letter containing Ms. Martinez's name.

Ms. Martinez said that she signed invoices obligating the Government every month for the duration of the EIS contract. She said that ESS sent invoices to VA indicating that they provided certain services on the EIS contract, such as reports and briefings to the Secretary. However, Ms. Nash told us that while she worked on the contract as an ESS employee, Ms. Martinez assigned her duties unrelated to the EIS contract, and this was confirmed by a Management Analyst who also said that Ms. Nash was involved in VA business unrelated to the EIS contract.

Ms. Martinez told us that she signed the invoices to authorize payment, verifying that the invoices were accurate and should be paid. On the contrary, we found ESS invoices reflecting that an Administrative Specialist and an IT Specialist certified them for payment. Ms. Martinez said that the IT Specialist supported her, and that she delegated the task of reviewing the ESS invoices to the IT Specialist. Ms. Martinez ultimately told us that she was not aware that as the COTR, she was the only one who could sign the invoices to obligate the Government. The COTR's certification of the invoices requires that the COTR verify that VA received the deliverables under the contract. In other words, VA should pay the invoices because the COTR made sure that VA received what it is paying for.

We found 10 hardcopy signed invoices, authorizing VA to pay ESS, dated November 30, 2006, to October 9, 2007, totaling \$700,962, with an additional \$235,652 reflected in the electronic records, for an overall total of \$936,614 improperly obligated. The hardcopy records reflected that the Administrative Specialist certified the first two invoices, stating in the comments section: "per the COTR, who is K. Adair Martinez, the service has been rendred [sic]," and the IT Specialist certified the other eight. The IT Specialist told us that Ms. Martinez directed her to sign and authorize payment to ESS, once VA received each invoice. The IT Specialist said that after certifying each, she notified Ms. Martinez via email and provided a courtesy copy to ESS; however, she said that she did not know if Ms. Martinez ever reviewed the invoices. The IT Specialist said that no one gave her a Delegation of Authority to act on behalf of the Contracting Officer and that after being reassigned to another area within OI&T, Ms. Martinez instructed someone else on her staff to process the ESS invoices for payment.

## **Conclusion**

We concluded that Ms. Martinez failed to properly perform her duties as a COTR, did not provide proper contract oversight when she delegated the task of signing ESS invoices to others, and improperly assigned non-contract tasks to Ms. Nash. We recognize that it may have been an administrative error when the Contract Specialist failed to ensure that Ms. Martinez signed a proper Delegation of Authority Letter, but without a signed letter allowing her to act on behalf of the Contracting Officer, Ms. Martinez did not have proper authority to sign invoices. However, even with a signed letter, she did not have the authority to delegate it to anyone else. Furthermore, Ms. Martinez improperly

assigned Ms. Nash tasks that were unrelated to the contract, but as the de facto COTR, she authorized payments, through delegation, to ESS as if they were. Moreover, without Ms. Martinez reviewing each ESS invoice submitted on the EIS contract, we do not know if VA received the required goods and services paid for by VA.

**Recommendation 3.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for failing to properly perform her duties as a COTR and for failing to provide proper contract oversight.

### **Issue 3: Whether Ms. Martinez Abused Her Authority and Engaged in a Prohibited Personnel Practice for the Personal Gain of a Friend**

Federal law states that recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity. 5 USC § 2301 (b). The law further provides that any employee, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment, as well as knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement. 5 USC § 2302 (b). The Merit System Protection Board defines an "abuse of authority" as an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain to preferred other persons. *D'Elia v. Department of the Treasury*, 60 M.S.P.R. 226, 232 (1993).

#### *Background*

Ms. Nash told us that while she was a contractor employee for ESS working on the EIS contract, Ms. Martinez assigned her Executive Assistant (EA) duties, including activities that were unrelated to the EIS contract. Ms. Nash said that in June 2007, Ms. Martinez told her about an impending announcement for a GS-15 EA position, and Ms. Nash applied for it. The certificate of eligibles, dated August 2, ranked a 10-point veteran first on the list and Ms. Nash third. An OI&T Management Analyst told us that, due to the veteran's placement on the list, Ms. Martinez could not select Ms. Nash for the EA position. Human Resources (HR) records reflected that Ms. Martinez's IPRM group also advertised four additional GS-15 positions between July 27 and August 13, 2007. Three were Supervisory IT Specialists, GS-2210, with the area of consideration being opened to all sources, and a Supervisory Program Management Officer, GS-340, with the area of consideration only to status employees. The Supervisory IT Specialist positions included an Incident Resolution position in Washington, DC; an Incident Resolution position in



Falling Waters, WV; and a Risk Management position in Washington, DC. These four positions reported to Ms. Maginnis, who reported to Ms. Martinez. Records further reflected that Ms. Nash applied for two of the GS-2210 positions and was selected for one, and status VA employees were promoted into the other three.

*Ms. Nash Conducted EA Duties While a Contractor Employee*

A Management Analyst with HR responsibilities, who previously worked in IPRM, told us that she first met Ms. Nash in March 2007 when the Analyst returned to the office after taking leave for active military duty. This was 6 months after Ms. Nash began working onsite as a contractor employee for ESS on the EIS contract. The Analyst said that at first she thought Ms. Nash was a Federal employee, because she performed the duties of a VA employee and she intimately involved herself in the IPRM office activities. She said that she saw Ms. Nash attending VA employee meetings, regardless of the subject matter, and that Ms. Nash became involved in office related human resource issues and operations. The Analyst told us that she was “uneasy” with how deeply Ms. Nash embedded herself into VA business unrelated to the EIS contract, her involvement in the day-to-day operations of the organization, and her being given access to substantially more information than VA employees. The Analyst said that she resisted Ms. Martinez’s efforts to “insert” Ms. Nash into her area of responsibility, which was staffing IPRM, and the Analyst said that she spoke to her supervisor about her concerns, asking her to keep Ms. Nash away from IPRM human resources related business.

Emails sent between Ms. Martinez and Ms. Nash, while Ms. Nash was an ESS employee, reflected that Ms. Martinez tasked Ms. Nash with duties normally performed by a Federal employee, more specifically by an EA. These duties, none of which were related to ESS or the EIS contract, included writing position descriptions for senior VA officials; composing letters for Ms. Martinez; editing Ms. Martinez’s biographical information; writing annual appraisals, performance plans, accomplishments, and bonus justifications for Ms. Martinez and another senior manager. Ms. Nash told us that while a contractor employee, she acted in the capacity of an EA to Ms. Martinez. She said that she would “do whatever she asked.” Ms. Nash also said that when she first began working onsite at VA as an ESS contractor employee, Ms. Martinez told her that it would be great to have her on board as a Federal employee.

*Ms. Nash’s Attempt to Obtain a Federal Appointment as an EA*

Personnel records reflected that on March 21, 2007, Ms. Martinez signed an EA, GS-15, position description certifying that the position was necessary to carry out Government functions for which Ms. Martinez was responsible. One day later, she requested a recruitment action through HR to fill the position. Records showed that HR posted position announcement #IT-07-440 for status eligible employee applicants on May 29, with a closing date of June 12. On June 20, HR referred two certificates of eligibles of status employees to Ms. Martinez.

The Management Analyst (mentioned above) told us that she wrote the position description for the EA position and that she initiated the announcement for status eligible employees only. She said that since Ms. Martinez expressed a desire to fill the position soon, she (the Analyst) limited applicants to this status group to generate a certificate of eligible candidates more quickly. However, she said that Ms. Martinez was upset by this, because she did not want to make a selection from status employees. She said that Ms. Martinez then instructed her to advertise the position a second time, opening it externally to all sources. Because Ms. Nash was not a VA employee at that time, she was not eligible to apply for a position open only to status eligibles. The Analyst said that she knew Ms. Martinez wanted to give Ms. Nash an opportunity to apply for the position. The Analyst said that Ms. Martinez never directly told her that she wanted to hire Ms. Nash; however the Analyst said that everyone in the organization knew that Ms. Martinez and Ms. Nash were close and it was assumed that Ms. Nash was favored.

██████████ told us that from the time that she first began working with Ms. Martinez, which was in July 2007, she knew that Ms. Martinez wanted Ms. Nash as her EA and would place her into that position as soon as she received approval on the position. Ms. Martinez admitted that she conveyed to her subordinate employees that she would “love” to have Ms. Nash as her EA and that employees were aware of it. Ms. Martinez also admitted that there was “probably preferential treatment” given in the hiring of Ms. Nash, as well as three others who were hired at the same time. ██████████ (b)(6) also told us that Ms. Martinez and Ms. Maginnis on numerous occasions asked when the position description would be complete, as they needed to get Ms. Nash hired, giving ██████████ the impression that Ms. Nash was “unequivocally” preselected for the job.

HR records showed that Ms. Nash applied for the EA position around July 26, 2007, when it was open to all sources, and HR issued a certificate of eligibles on August 2. The certificate reflected that a 10-point veteran ranked first on the list with Ms. Nash listed third. The Analyst told us that Ms. Martinez could not select Ms. Nash for the position from that certificate, because there was a veteran with hiring preference “blocking” Ms. Nash. Ms. Nash told us that she recalled applying for the position twice and that she was blocked from selection both times by veterans with preference. She said that Ms. Martinez shut down the certificates, because Ms. Martinez was going to “select the candidate that she wanted.” We only found the one EA position announcement that was first opened to status eligible employees and then extended to all sources. In an August 14 email, Ms. Martinez told the Analyst that she wanted to cancel the non-supervisory EA position and modify it to be a supervisory position. About a week later, an HR Specialist sent letters to all applicants informing them that the placement action to fill the position was cancelled by management, and on August 28, Ms. Martinez signed the certificates stating that she did not select any of the candidates.

Ms. Martinez told us that she did not shut down the EA announcement because Ms. Nash was blocked by a veteran. She said that she shut it down because the position description

was not correct, because she wanted it to be a supervisory position. The Director of Incident Response, IPRM, told us that Ms. Nash told her that Ms. Martinez wanted to make it supervisory so that Ms. Nash would qualify for a Senior Executive Service (SES) position. HR records reflected that Ms. Martinez modified the position description to make it supervisory, but even though she advertised the non-supervisory position twice and later modified it, Ms. Martinez took no action to re-announce it as a supervisory position. Ms. Martinez said that although she did not recall telling Ms. Nash that she shut the original EA announcement down due to a veteran blocking Ms. Nash, she said that if that was what Ms. Nash recalled, then she (Ms. Martinez) must have said that to her. [REDACTED] said that Ms. Maginnis subsequently told Ms. Martinez that Ms. Nash could (b)(6) apply for another GS-15 position and they could then, at a later time, lateral her into the EA position, without any job announcement or competition for the GS-15 EA position.

#### *Ms. Nash's Selection as a Supervisory IT Specialist*

Records showed that HR received Ms. Nash's resume for a Supervisory IT Specialist, series 2210, GS-15 position on August 14, 2007, and on September 12, Ms. Maginnis signed the certificate of eligibles selecting Ms. Nash for the position. However, 3 days earlier, she sent Ms. Martinez an email stating that they proposed Ms. Nash for the position of "Risk" and that Ms. Martinez could then "move her to either your EA or Cyber." Thus, 3 days before selecting Ms. Nash, Ms. Maginnis communicated to Ms. Martinez the plan to move Ms. Nash to the EA position (or elsewhere). Ms. Maginnis said that she was the proposing and selecting official for the appointment and that Ms. Martinez approached her (Ms. Maginnis) and said of Ms. Nash, "she would be a good person, yes." She also said that Ms. Martinez's recommendation of Ms. Nash "was a strong reference check." She said that Ms. Martinez was not only her supervisor but also her mentor; that Ms. Martinez highly recommended Ms. Nash for the position; and that she (Ms. Maginnis) had trust in that. Ms. Nash's appointment date was November 25, 2007.

Ms. Martinez told us that Ms. Maginnis and [REDACTED] "ran" Ms. Nash's hiring process (b)(6) and that Ms. Maginnis was the selecting official. Personnel records reflected that Ms. Martinez was the concurring official and the approving official was Mr. Howard. Ms. Martinez said that it was her impression that there was a ranking panel but she did not know if the applicants were interviewed. Ms. Martinez said that her role in selecting Ms. Nash was that Ms. Maginnis outlined what she was going to do, and she (Ms. Martinez) agreed. Ms. Martinez further said that she knew that Ms. Nash was qualified, and she told Ms. Maginnis how impressed she was with Ms. Nash, prior to the selection. She said that she and Ms. Maginnis discussed different people for the position, and she told Ms. Maginnis to go through the hiring process and assess how Ms. Nash ranked. She added that she told Ms. Maginnis that she really wanted Ms. Nash to come on board. Ms. Martinez told us that Ms. Nash was probably given preferential treatment

during the initial hiring process because Ms. Maginnis and [REDACTED] knew Ms. Nash and (b)(6) her work.

Recruitment files contained a spreadsheet reflecting that Ms. Nash was ranked and rated as the best qualified candidate for this position. However, an HR Specialist conducted an independent review of the recruitment file and applicant packages for this appointment, at our request, and the HR Specialist determined that Ms. Nash “did not fully meet the expected level of specialized experience for this position, and is not considered a best qualified candidate.” In addition, the HR Specialist questioned whether status eligible veterans were referred on the certificates; and after a review of the files, another HR Consultant told us that she identified as many as three eligible veterans who had preference over Ms. Nash. The HR Consultant also said that she was very impressed with the vast and highly technical experience of many of the applicants and that Ms. Nash was not the best qualified candidate. Ms. Nash told us that she recalled taking only one computer class in college and that she had limited technical knowledge and experience in the IT areas required for the position.

*Ms. Nash Hired at a Rate Above the Minimum Salary*

VA policy states that an appointment at a rate above the minimum of a General Schedule grade may be made based on the superior qualifications of a candidate, and that requests for approval will be submitted to Central Office Human Resources for technical review and concurrence prior to submission to the approving official. VA Handbook 5007, Part II, Chapter 3, paragraph 4 and Appendix D. Unless there is appropriate justification, a GS-15 is hired at step 1. Policy further states that the justification must include a description of the recruitment efforts; a description of the candidates’ superior qualifications and a comparison of the candidate’s skills to those of other available applicants; documentation of existing pay; explanation of how the proposed rate was determined to be appropriate; and reasons for the rate instead of, or in addition to a recruitment incentive.

Ms. Martinez and Ms. Maginnis told us that the justification for appointing Ms. Nash above the minimum grade was that Ms. Nash made more money in the private sector at ESS than a GS-15, step 1. Ms. Maginnis said that she was only aware of using salary as criteria, whereas Ms. Martinez said there was a requirement to obtain a copy of Ms. Nash’s paycheck and a form that she could not remember. Although Ms. Martinez signed the paperwork appointing Ms. Nash as a GS-15, step 10, she said that she did not realize that Ms. Nash entered Federal service at that high a step. In a September 20, 2007, memorandum, Ms. Martinez requested that Mr. Howard approve Ms. Nash’s appointment at a rate above the minimum. Ms. Martinez stated, “After carefully reviewing Ms. Nash’s qualifications and conducting an in-depth interview, we strongly believe that based on her unique knowledge and experience, she should be hired as a GS-15, Step 10, which is commensurate with what she is making now in the private sector.” Personnel records contained only that memorandum and a copy of Ms. Nash’s

ESS paycheck, dated September 10, 2007, as justification. Records did not contain a description of their recruitment efforts; a description of Ms. Nash's "superior qualifications" as compared to the other available applicants; or the reasons for the rate instead of, or in addition to, a recruitment incentive, as required by VA policy. The difference in Ms. Nash's starting salary as a GS-15, step 10, from that of a GS-15, step 1, was \$33,108.

*Ms. Nash Reassigned to EA Position for Ms. Martinez*

One month after being appointed to a Supervisory IT Specialist position, Ms. Nash sent Ms. Martinez an email stating, "I really want to be your EA as soon as possible." Ms. Nash told us that after receiving the IT Specialist appointment, she was detailed into the EA position and later reassigned permanently. ██████████ said that (b)(6) once the EA position description was reclassified to be supervisory, Ms. Martinez instructed them to process the paperwork to laterally move Ms. Nash into it. ██████████ further said that she knew from the beginning that Ms. Martinez wanted Ms. Nash as her EA and would place her into that "slot" as soon as she got approval on the position.

An HR Consultant told us that an employee must be in their position for a minimum of 90 days before they can be permanently reassigned to another. Personnel records reflected that Ms. Maginnis requested and Ms. Martinez approved Ms. Nash's reassignment with an effective date of April 13, 2008, or about 4 months after being selected as a Supervisory IT Specialist, so ultimately, Ms. Nash was placed into an EA position, although hired for another. Ms. Nash told us that given her skills, it made better sense for her to provide direct support to Ms. Martinez as her EA.

## **Conclusion**

We concluded that Ms. Martinez abused her authority and engaged in a prohibited personnel practice when she expressed to her subordinates, who were also the rating and selecting officials, that her preference was for them to hire Ms. Nash, giving Ms. Nash an advantage over other applicants and when she failed to assure that all applicants received an equal opportunity, in particular those with veterans' preference. Ms. Martinez's efforts to hire Ms. Nash as her EA started when Ms. Nash was a contractor employee on the ESS contract and Ms. Martinez began integrating her into Government day-to-day business. Ms. Martinez went to the extent of requesting that a position be re-announced so that Ms. Nash had an opportunity to apply; closed out the certificate because Ms. Nash could not be reached due to a veteran blocking her; and then planned to hire her as a Supervisory IT Specialist so that she could later laterally move her into an EA position.

Additionally, Ms. Martinez expressed to Ms. Maginnis, the selecting official, that she "really wanted Ms. Nash to come on board," and they developed a plan to hire Ms. Nash into a Supervisory IT Specialist position under Ms. Maginnis' area of responsibility. Ms. Maginnis selected Ms. Nash as the best qualified for the position,

based solely on Ms. Martinez’s recommendation and desire to get Ms. Nash “on board” into Federal service; however an independent review of the applicant packages disclosed that Ms. Nash was not the best qualified. Ms. Nash even admitted to us that she did not have the technical skills necessary for the position and that it made better sense to put her skills to use as an EA. Moreover, Ms. Martinez did not comply with VA policy when she requested that Ms. Nash be appointed at a rate above the minimum based on Ms. Nash’s qualifications and private sector salary. Ms. Martinez’s limited justification did not comply with VA policy requiring her to provide a description of her recruitment efforts, a comparison of Ms. Nash’s qualifications to the other applicants, or the reason for the rate instead of a recruitment incentive. In addition, as noted above, we determined that Ms. Nash was not the best qualified candidate for the position, and even Ms. Nash told us that she had limited technical knowledge and experience in the IT areas required for the position.

**Recommendation 4.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for abuse of her authority and engaging in a prohibited personnel practice.

**Recommendation 5.** We recommend that the Assistant Secretary for Information and Technology confer with the Office of Human Resources to determine the appropriate corrective action concerning Ms. Nash’s appointment, to include her appointment at a rate above the minimum, and take such corrective action.

**Issue 4: Whether Ms. Maginnis, [REDACTED] Abused Their Authority (b)(6) and Engaged in Prohibited Personnel Practices**

VA policy states that officials authorized to recommend or to approve the selection of a person for a position are responsible for being familiar with and following the policies and principles contained in the policy. VA Handbook 5005, Part II, Chapter 2, Para. 3. Additionally, it states that priority in selection for assignment to a position must be given to persons with statutory entitlement and that selections for positions will be based on the objective evaluation of the candidates’ total qualifications for the position. “Qualifications” means the combination of experience, training, education, skills, knowledges, abilities, personal characteristics, and merit factors deemed to be pertinent to successful performance.

Ms. Martinez told us that Ms. Maginnis was responsible for the hiring of four GS-15 employees, as described above, in October 2007, and personnel records showed that Ms. Nash was one of the four. Ms. Martinez told us that Ms. Maginnis and [REDACTED] (b)(6) “ran” Ms. Nash’s hiring process and that Ms. Maginnis was the selecting official. Ms. Maginnis told us that she selected Ms. Nash because she believed Nash was properly reviewed by a panel or qualified by HR; however, she did not recall if there were any applicants with veterans preference in Ms. Nash’s hiring package.

██████████ told us that Ms. Maginnis and Ms. Martinez told her that the “mantra” of the hiring effort was to get the four specific preferred candidates, Ms. Nash and three current subordinates of Ms. Maginnis, hired into the GS-15 positions so that they could “put them in the position that we want them in.” ██████████ said that since she felt uncomfortable with moving employees around, she called the Austin HR; however, (b)(6) someone there told her that it was “okay” to move employees, as long as it did not increase the number of positions. She said that Ms. Maginnis told Ms. Martinez that it was okay to have Ms. Nash apply for any one of the four GS-15 positions under Ms. Maginnis’ area of responsibility and then when Ms. Martinez’s EA position opened, they could lateral Ms. Nash into that position.

██████████ said that they received the certificates of eligibles for the four positions on August 30, 2007, and on September 4, she and Ms. Maginnis did the first “cert” by reviewing the applicant files and rating and ranking them for the Supervisory Program Management Officer position. She said that after they rated and ranked the applicants, they each had a different applicant as the best qualified. When discussing their scoring, ██████████ said that Ms. Maginnis told her that “it doesn’t matter. I can pick whoever I (b)(6) want anyway. I don’t have to do this.” ██████████ said that after her disagreement with Ms. Maginnis over the ranking of the applicants for this one position, Ms. Maginnis took over the process. She further said that there was no rating and ranking panel for the three remaining positions, and Ms. Maginnis then signed the certificates for all four GS-15 positions on September 12. However, ██████████ said that on September 9, Ms. Maginnis sent an email to Ms. Martinez outlining who was preferred to be selected for the GS-15 positions. The email reflected the initials of Ms. Nash and of the three GS-14s working for Ms. Maginnis and next to each respective set of initials was a position.

Ms. Maginnis told us that ██████████ was on the review panel for the certificates but that she (Ms. Maginnis) was more versed in HR processes than ██████████. Ms. Maginnis further said that although she and ██████████ were involved in the selection process, she could not remember if she (Ms. Maginnis) participated in the review panel. Moreover, when we asked about her recollection of the recruitment efforts to hire the four GS-15s, Ms. Maginnis responded over 100 times with phrases such as “I can’t remember” or “I don’t know.” Ms. Maginnis specifically said that she did not recall if (b)(6) she interviewed the applicants, how she made the final selection, or why the rating and ranking spreadsheets for the applicants were dated 19 days after she made her selections and signed the certificates. However, Ms. Maginnis told us that ██████████ spent a lot of time putting together the spreadsheets, initially claiming that they signed and dated them; however, she later said that ██████████ may have created the spreadsheets afterwards. Ms. Maginnis said that even if ██████████ “created a fancy page after the fact” it did not bother her “as long as the numbers were right.”

Ms. Maginnis said that she selected the four individuals for these positions for a “variety of reasons.” She said that two of the people already worked for her; that she knew them;

and that they were doing a “very, very good job.” She said that all four candidates were found to be qualified by HR; they were listed on a certificate that was reviewed, “perhaps paneled;” but she could not recall how she made the selections, only that “they were on the cert.” Records reflected that Ms. Maginnis signed the certificate, selecting Ms. Nash for one of the Supervisory IT Specialist positions; however, she was the proposing official, Ms. Martinez concurred with the selection, and Mr. Howard approved it. The certificate that Ms. Maginnis signed also contained several applicants entitled to veterans’ preference; however, Ms. Maginnis told us that she did not give preference to the veteran applicants, since she did not believe that she was required to hire “100 percent” veterans.

██████████ told us that she attended supervisory training on September 19, 2007, and at that time, she realized that all the above GS-15 applicant packages should have been rated and ranked. She said that the training prompted several “ah-ha” moments for her, and she regretted not receiving training before becoming a supervisor. She said that she felt uncomfortable about the situation, so she called the Senior Executive Association, who referred her to an attorney on their staff. She said that she explained the matter to the attorney, and he advised her to keep a written record. After gaining ██████████ permission, the attorney told us that he recalled speaking to ██████████ on September 24, instructing her to keep contemporaneous notes. ██████████ said that after speaking with (b)(6) the attorney, she immediately telephoned Ms. Maginnis to tell her that they did not process the GS-15 appointments properly and that they should have rated and ranked all four of the hiring packages, not just the one. ██████████ said that Ms. Maginnis replied, “I don’t know what you’re talking about. I’m comfortable with what we did. And we never had this conversation.”

██████████ told us that Ms. Maginnis did not have rating and ranking spreadsheets for all four of the GS-15 positions prior to making her selections, because ██████████ created three of them afterwards. ██████████ had to create them after the fact, because they did not exist. ██████████ said that after ██████████ sent the signed certificates with the selected names to Austin HR for processing, an HR Specialist requested that they also send (b)(6) the rating and ranking spreadsheets. ██████████ said that ██████████ asked her for the spreadsheets, and she told ██████████ that she only had the one for the Supervisory Program Management Officer position. She said that ██████████ told her to create spreadsheets for the other three, making sure that the selectees “come out on top” and that it was just a “perfunctory matter” of sending the certificates to Austin.

██████████ said that she then went through copies of all the applications for the next couple of days, and she said that she created the rating and ranking sheets. She said that Ms. Maginnis already decided on her selections for the positions, so ██████████ said that she was “fulfilling a requirement to make that happen.” The spreadsheets showed, in one (b)(6) example, that ██████████ gave Ms. Nash two different ratings for two identical Supervisory IT Specialist positions. For the one in which Ms. Maginnis selected Ms. Nash, the spreadsheet reflected a total of 28 points, whereas the one where Ms. Maginnis selected



someone else, the sheet reflected only 24 points. ██████ said that after she completed the sheets to show the applicants selected by Ms. Maginnis were best qualified, she then backdated them to reflect September 4, 2007, prior to the September 12 selection date.

██████ told us that she had extensive HR experience and that when she was the ██████, beginning in early September 2007, her responsibility was to put together hiring packages to send to Austin HR for processing. She said that one of her tasks was to put together the hiring packages for the four GS-15 positions. In an email, a Program (b)(6) Analyst told Ms. Maginnis and ██████ that the Austin HR received the four GS-15 hiring packages on September 25; however, 3 days later, an Austin HR Specialist asked ██████ for the rating and ranking spreadsheets. She explained that they could not make job offers to the selectees until they verified that the best qualified were selected.

In a separate email, an HR Specialist asked Ms. Maginnis for the “score ranking sheets on the candidates” and Ms. Maginnis, in turn, asked ██████ if they were required. ██████ told us that although she answered Ms. Maginnis in an email 3 days later that (b)(6) “evidently they believe it is required,” she claimed that she never saw the email from Austin HR asking for the missing spreadsheets, and she said that she was not aware that anything was missing from the GS-15 hiring packages. Moreover, when we asked about her recollection of the HR selection processes used for the four GS-15s, ██████ responded over 100 times with phrases such as “I don’t know” or “I can’t recall.”

However, in a series of October 1 emails, ██████ told an Austin HR Specialist that “management did not want to provide the rating and ranking sheets as they considered (b)(6) them confidential” and asked whether there was “anything that can be used in its place.” The HR Specialist replied that they needed the spreadsheets, and 3 hours later, ██████ told the HR Specialist that she was in the process of faxing them to Austin.

██████ told us that the purpose of the spreadsheets was to show that the hiring officials followed the proper procedures, such as a panel reviewing applicant packages, ranking the applicants, conducting interviews, and providing a rating and ranking total for each. She said she signed the spreadsheets on October 1, 2007, to signify that all the proper steps were taken and that to the best of her knowledge, done correctly. She said that she was not part of the panel and that she did not know who conducted the interviews. She further said that she did not know when the ranking sheets were prepared, only that ██████ gave them to her on that date. ██████ identified her signature and handwritten date of 10/01/07 on the spreadsheet for one of the Supervisory (b)(6) IT Specialists, but the spreadsheet reflected an initial date of 09/04/07, the same backdate that ██████ wrote that was clearly overwritten with 10/01/07. ██████ said that she scribbled over the original date, because she made a mistake. ██████ told us that she signed the spreadsheet on October 1, 2007.

██████ told us that the individuals selected for the four GS-15 positions applied to all four of the job announcements so that they were listed on certificates for all four. She

also said that each of the four individuals knew in advance that they would be selected for their respective jobs. She said that one selectee came to her every day asking the status of her package, because she already knew that she was selected and wanted to know how long it was going to take to get her promotion.

In a September 20, 2007, email, Ms. Maginnis told [REDACTED], Ms. Martinez, and [REDACTED] that she wanted to meet with three of the selectees to “informally” tell them that they were selected for the GS-15 positions. The email chain reflected that both [REDACTED] and Ms. Maginnis were away from the office, and [REDACTED] asked for Ms. Maginnis to wait until she [REDACTED] returned. Ms. Maginnis replied to [REDACTED] that “they need to know INFORMALLY before the word leaks out and I don’t want to wait until I return 1 October.” She further said that “they don’t know that they will not need to ‘swap jobs’.” [REDACTED] advised in a follow up email that they should wait until the SF-52 (Request for Personnel Action) was processed or they could open themselves to liability, resulting in Ms. Maginnis sending [REDACTED] an email instructing her to process the SF-52s, stating “start them now.” (b)(6)

## Conclusion

We concluded that Ms. Maginnis abused her authority and engaged in prohibited personnel practices when she preselected individuals for four GS-15 positions, three being Supervisory IT Specialists and one a Supervisory Program Management Officer. Ms. Maginnis selected the individuals from certificates without taking the required steps to determine the best qualified candidate and with a total disregard for fair and open competition. Ms. Maginnis told a subordinate that she could select whomever she wanted, and she conveyed to us that she had a complete lack of concern that rating and ranking sheets were created 19 days after she made the selections. Ms. Maginnis made the selections without ranking three of the applicants for their competencies, failed to come to an agreement with [REDACTED], a panel member, on the fourth, and failed to provide veterans’ preference to qualified applicants in one hiring action. We further concluded that Ms. Maginnis’ intended goal was to get the names of the preselected individuals on multiple certificates so that she could appoint each one to a specific preselected position and geographic location without regard to the competitive process. Ultimately, her plan worked, and she was able to avoid a need to “swap jobs” at a later date. We found it problematic that Ms. Maginnis was less than candid when asked about her involvement in the hiring actions for these positions in that she continually experienced either selective memory or memory failure in recollecting her involvement. (b)(6)

We further concluded that [REDACTED] abused their authority and engaged in prohibited personnel practices when they knowingly failed to properly process applicant packages for the four GS-15 positions. Both knew that either Ms. Maginnis and/or Ms. Martinez preselected the four individuals for the positions and that the applicants were not rated and ranked to determine the best qualified. During the process, [REDACTED] (b)(6)

sought guidance on one concern, asking Austin HR if it was proper to move employees from one position to another, and reported another concern to Ms. Maginnis, telling her that they did not follow proper procedures to determine the best qualified for each of the four positions. However even after telling Ms. Maginnis that they failed to follow procedures, ██████ created false spreadsheets, backdating them to reflect that she assessed the applicant packages and ranked the candidates prior to when Ms. Maginnis signed the certificates. It appears that ██████ was conflicted about some of her actions and she sought guidance and expressed concern. ██████ improper actions may be (b)(6) mitigated by the fact that she was carrying out Ms. Maginnis' pre-selection plan; nonetheless, ██████ actions were improper. We should also note that ██████ testimony was confirmed by documents and verifiable facts. In fact, ██████ version of events was the only one that logically explained all of the relevant facts and was not evasive. ██████ credibility was further enhanced by her honest admission of her own improper actions, which was against her own self interest.

██████, however, denied knowing that the spreadsheets were not with the applicant packages when she sent them to Austin HR and denied any knowledge of Austin subsequently requesting the spreadsheets. However, on the same day that Austin contacted her, ██████ instructed ██████ to create the spreadsheets, making sure that the selected candidates ranked "on top." Further, ██████ signed the spreadsheets to signify that all the proper steps were taken and done correctly, initially backdating them (b)(6) to reflect that they were created prior to the selections, but with second thoughts, wrote over her initial entry with the date of the Austin HR email. We find it problematic that ██████ was less than candid with us when we asked about her involvement in processing the applicant packages for these positions in that she continually experienced either selective memory or memory failure when recollecting her involvement.

**Recommendation 6.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Maginnis for abuse of her authority and engaging in prohibited personnel practices.

**Recommendation 7.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against ██████ for abuse of her authority and engaging in prohibited personnel practices.

**Recommendation 8.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against ██████ for abuse of her (b)(6) authority and engaging in prohibited personnel practices.

**Recommendation 9.** We recommend that the Assistant Secretary for Information and Technology confer with the Office of Human Resources to determine the appropriate corrective action concerning the appointments of the four GS-15s and take such corrective action.

## **Issue 5: Whether Ms. Martinez Misused Her Position for Personal Gain**

Federal regulations state that an employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government. 5 CFR § 735.203. Standards of Ethical Conduct for Employees of the Executive Branch state that employees shall not use public office for private gain. 5 CFR § 2635.101 (b) (7). The OPM Guide to Senior Executive Service (SES) Qualifications, dated October 2006, states that one of the fundamental competencies of a member of the Senior Executive Service is that the employee behaves in an honest, fair, and ethical manner; shows consistency in words and actions; models high standards of ethics.

### *Background*

Mr. Howard told us that, while working for the VA, he reported directly to the Secretary. Ms. Martinez said that Mr. Howard became her direct supervisor when she was assigned to his organization shortly after the May 2006 data breach. Both Ms. Martinez and Mr. Howard told us that they began an inappropriate personal relationship in April 2007 and that it continued for several months after he left VA in January 2009. Records showed that Mr. Howard proposed, and the Deputy Secretary of VA approved, the selection of Ms. Martinez for the Deputy Assistant Secretary (DAS) IPRM position 1 month prior to the initiation of their relationship; however, they both denied that there was a connection between her appointment as a DAS and the start of the relationship. In a March 18, 2008, memorandum, Mr. Howard stated that because of a continuing effort to improve the organization regarding information protection, he decided to relocate the main office of IPRM to a field location, and records showed that Ms. Martinez relocated to the Bay Pines VA Medical Center campus effective July 6. Mr. Howard told us that after Ms. Martinez relocated to Florida, they continued their inappropriate relationship when she returned to Washington, DC, on official VA travel.

### *Ms. Martinez's Relocation to Florida*

Ms. Martinez told us that for personal family-related reasons, she asked Mr. Howard if she could relocate from DC to a home that she owned in Florida near St. Petersburg. She said that he agreed to allow her to work remotely from Florida on a trial basis. Mr. Howard told us that Ms. Martinez told him that there was family pressure for her to move to Florida and that she was going there one way or the other. He said that he was reluctant to move her initially, because he did not think that the organization was “mature enough.” He said that since Ms. Martinez decided that she was going to move, he had a choice to either remove her from her current position or transfer her, at her own expense, and “try to operate” from Florida. He said that he chose the latter, since as an SES, it would have been difficult to remove her.

Mr. Howard said that there was already a long-range goal to relocate some of his senior leadership to field facilities. He said that employees reported being suppressed at their

facilities and that he was concerned about the span of control of his very large field security operation. He said that since he had other senior leaders in virtual positions operating remotely, he decided to leave Ms. Martinez in the DAS IPRM position, operate it from Bay Pines, and gradually build a capability there. He further said that the site had a heavy density of OI&T employees from several organizations without adequate leadership, and he said that Ms. Martinez was a “senior presence who kind of keeps track of what’s going on.” However, during a site visit to Bay Pines, we found that Ms. Martinez’s office was in an isolated location on the campus and that within her office, she had a video conferencing unit. In addition, OI&T employees at Bay Pines told us that they had very little contact with her.

*Ms. Martinez Engaged in Excessive Travel to Washington, DC*

Federal travel regulations state that an agency may pay only those expenses essential to the transactions of official business and an employee must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. 41 CFR § 301-2.2, 2.3. VA policy states that employees issued a Government contractor-issued travel charge card must use prudent travel practices and observe the rules and regulations governing official travel. VA Handbook 0631.1, Paragraph 4c.

Travel records reflected that between July 2008 and March 2009, the first 9 months after she moved to Florida to work as a virtual employee, Ms. Martinez traveled back to the Washington, DC, area 22 times, at a cost of over \$37,000. In a review of time and attendance records, we found that during that time period, Ms. Martinez spent over 70 percent of her work days away from Bay Pines on travel and almost 60 percent of her work days were in the DC area. Additionally, we found that since April 2009, Ms. Martinez continued to travel to the DC area an average of twice a month.

Ms. Martinez said that one of her responsibilities was to sign the certification and accreditation letters authorizing VA to operate their IT systems and that before she moved to Florida, she did not anticipate that there would be so many to sign. She said that they were very large document packages, and she said that she was concerned that they might get lost if someone sent them to her via Federal Express. Ms. Nash told us that Ms. Martinez spent about 2 weeks out of each month in DC and that one of the reasons was to hold “face-to-face” meetings. Ms. Martinez said that she traveled back to DC for three reasons. One was for the certifications, another for meetings, and the third was because of Secretary Peake “driving an agenda.” Mr. Howard said that when he agreed to relocate Ms. Martinez to Florida, he did not expect there would be so many certification packages needing signatures; however, he said that Ms. Martinez could have signed them as a virtual employee, remaining in Florida. Mr. Howard denied that Ms. Martinez’s frequent travel to DC was the result of their relationship; however, he said that they continued their relationship when Ms. Martinez visited the area up until February or March 2009.

## Conclusion

We concluded that Ms. Martinez misused her position when she took unfair advantage of an inappropriate personal relationship with Mr. Howard to gain his approval to relocate her to Florida. We believe that Mr. Howard's rationale of a greater field presence and intent to improve information protection was a pretext to honor Ms. Martinez's request and provide her a personal benefit. We found that Ms. Martinez's Florida office was in a remote location; that she had little contact with the OI&T employees; and that she spent most of her time in the DC area, which decreased her time devoted to field presence and leadership issues. Furthermore, her justifications for frequently traveling to DC, at a substantial cost to VA, were to accomplish tasks that she could easily do from Florida, such as sign certifications and participate in meetings via video conferencing. In addition, both Ms. Martinez and Mr. Howard took advantage of continuing their relationship when she traveled to the DC area.

**Recommendation 10.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for misusing her position for personal gain.

**Recommendation 11.** We recommend that the Assistant Secretary for Information and Technology reconsider the decision to locate Ms. Martinez's position in Bay Pines to determine whether it is in the best interest of VA and that the Assistant Secretary take appropriate corrective action.

## Comments

The Assistant Secretary for Information and Technology concurred with our recommendations. He said that he would confer with the Office of Human Resources and Administration and Information and Technology and the General Counsel to ensure that appropriate administrative and corrective actions are taken. The Assistant Secretary was responsive to our recommendations, and his comments can be found in Appendix A. We will follow up to ensure that the recommendations are fully implemented.

*(original signed by:)*

JAMES J. O'NEILL  
Assistant Inspector General for  
Investigations

## Assistant Secretary's Comments

**Department of  
Veterans Affairs**

**Memorandum**

**Date:** July 30, 2009

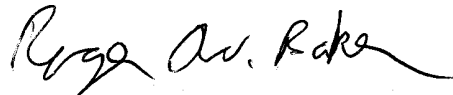
**From:** Assistant Secretary for Information and Technology

**Subject:** Draft Inspector General Report

**To:** Mr. James J. O'Neill, Assistant Inspector General for Investigations, Office of the Inspector General

I have reviewed the Draft inspector General Report entitled "Administrative Investigation Misuse of Position, Abuse of Authority, and Prohibited Personnel Practices, Office of Information Technology, Washington, DC. My organizations' response to the IG's findings follow.

Thank you for the opportunity to review this draft report and comment. Should you need further information, you may reach me at 202-461-6911.



Roger W. Baker

## **Assistant Secretary's Comments to Office of Inspector General's Report**

The following Assistant Secretary's comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

### **OIG Recommendation(s)**

**Recommendation 1.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for the misuse of her position for the personal gain of Ms. Nash.

Concur                      **Target Completion Date:** 9/15/09

**Recommendation 2.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for violating acquisition regulations when she improperly shared VA proprietary procurement information with Ms. Nash and Mr. Doe.

Concur                      **Target Completion Date:** 9/15/09

**Recommendation 3.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for failing to properly perform her duties as a COTR and for failing to provide proper contract oversight.

Concur                      **Target Completion Date:** 9/15/09



**Recommendation 4.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for abuse of her authority and engaging in a prohibited personnel practice.

Concur **Target Completion Date:** 9/15/09

I concur in recommendations 1-4. I concur with the recommendations to take appropriate administrative action for these various violations. I intend to discuss these matters with the Office of Human Resources and Administration and the General Counsel to ensure that the actions taken are appropriate.

**Recommendation 5.** We recommend that the Assistant Secretary for Information and Technology confer with the Office of Human Resources to determine the appropriate corrective action concerning Ms. Nash's appointment, to include her appointment at a rate above the minimum, and take such corrective action.

Concur **Target Completion Date:** 9/15/09

I concur with this recommendation and will discuss the matter with the Office of Human Resources and Administration to determine what appropriate corrective action is warranted and then ensure that that action is taken.

**Recommendation 6.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Maginnis for abuse of her authority and engaging in prohibited personnel practices.

Concur **Target Completion Date:** 9/15/09

I concur with this recommendation and will discuss the matter with the Office of Human Resources and Administration and the General Counsel to determine the appropriate administrative action that should be taken.

**Recommendation 7.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against [REDACTED] for abuse of her (b)(6) authority and engaging in prohibited personnel practices.

Concur **Target Completion Date:** 9/15/09

I concur with this recommendation and will discuss the matter with the Office of Human Resources and Administration and the General Counsel to determine the appropriate administrative action that should be taken.

**Recommendation 8.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against [REDACTED] for abuse of her (b)(6) authority and engaging in prohibited personnel practices.

Concur **Target Completion Date:** 9/15/09

I concur with this recommendation and will discuss the matter with the Office of Human Resources and Administration and the General Counsel to determine the appropriate administrative action that should be taken.

**Recommendation 9.** We recommend that the Assistant Secretary for Information and Technology confer with the Office of Human Resources to determine the appropriate corrective action concerning the appointments of the four GS-15s and take such corrective action.

Concur **Target Completion Date:** 9/15/09

I concur with this recommendation and will discuss the matter with the Office of Human Resources and Administration to determine what appropriate corrective action is warranted and then ensure that, that action is taken.

**Recommendation 10.** We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against Ms. Martinez for misusing her position for personal gain.

Concur **Target Completion Date:** 9/15/09

I concur with the recommendation to take appropriate administrative action. I intend to discuss this matter with the Office of Human Resources and Administration and the General Counsel to ensure that the actions taken are appropriate.

**Recommendation 11.** We recommend that the Assistant Secretary for Information and Technology reconsider the decision to locate Ms. Martinez's position in Bay Pines to determine whether it is in the best interest of VA and that the Assistant Secretary take appropriate corrective action.

Concur **Target Completion Date:** 9/15/09

I concur with this recommendation and will discuss the matter with the Office of Human Resources and Administration and the General Counsel to determine the appropriate corrective action that should be taken.

## **OIG Contact and Staff Acknowledgments**

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OIG Contact	Linda Fournier – (202) 461-4500
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Acknowledgments	William A. Tully
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## Report Distribution

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